



**ZONING BOARD OF APPEALS**  
**RICHARD D. CARNEY MUNICIPAL OFFICE BUILDING**  
**100 MAPLE AVENUE**  
**SHREWSBURY, MASSACHUSETTS 01545-5398**

May 31, 2005

**PUBLIC HEARING:** Robert and Monica Maher, 52 Maple Circle, Shrewsbury, MA.

**PURPOSE:** To hear the appeal of Robert and Monica Maher, 52 Maple Circle, Shrewsbury, MA, for a special permit as required by the Town of Shrewsbury Zoning Bylaw, Section IV, Subsection B, to allow the construction of an addition upon property located at 52 Maple Circle maintaining the existing setbacks of said property. The subject premises is described on the Shrewsbury Assessor's Tax Plate 27 as Plot 332.

**PRESENT:** Anthony M. Salerno, Chairman, Paul M. George, Melvin P. Gordon, Alfred C. Confalone, Ronald I Rosen and Ronald S. Alarie, Building Inspector.

Mr. Salerno opened the hearing by reading the advertisement as it appeared in the Worcester Telegram on May 16, 2005 and May 23, 2005.

Mr. Salerno: Please identify yourself for the record and make your presentation.

Mr. Maher: My name is Robert Maher.

Ms. Maher: I'm Monica Maher.

Mr. Maher: The document that I handed out consists of four pages. There's a current first floor plan. That's what our house is right now. The key reason that we needed a special permit was, if I can draw your attention to the Richard Avenue side of the house, the setback by the town requires 30 ft. and we're at 19.4. That's the existing structure. It's a nonconforming, existing structure. The front is at 28.2 ft. where it needs to be 30 ft., but, again, it's a nonconforming existing structure. The reason that we needed the special permit was because we plan on making our current cape into a colonial. There are already two bedrooms upstairs. We're going to dormer the front roof as well so the Richard Ave. side would change in appearance, but we're not going to be changing the footprint of the house.

The remaining pieces of the document just illustrate what we're doing on the other side of the house.

Ms. Maher: Where it doesn't conform.

Mr. Maher: Yes. Currently, on the Ward side, there is 7.5 ft. We didn't know the property line when we purchased the house. The previous owner had done that. So, that's all coming down.

On the second page, that is our proposed first floor. You can see that we'll be 11 ft. back from the property line there. So, that will be in compliance with the town.

Mr. George: So, you'll be removing the garage?

Mr. Maher: Correct, yes.

Mr. George: In place of the addition?

Mr. Maher: Yes. The current garage will all come down and we'll have a new addition over there which will be within the setbacks as specified by the town.

Mr. Salerno: You're going to build it in conformity with the plans as submitted?

Mr. Maher: Yes. The basic footprint is what we'd be going after.

Ms. Maher: We don't exactly know where the bathrooms are going to be, but we're adding one bedroom and one bathroom.

Mr. Gordon: I hope you do by the time you build it.

Ms. Maher: Yes.

Mr. Salerno: They're on a corner lot anyways, right?

Mr. Alarie: It's a corner lot. There are two front yard requirements and two side yard requirements.

Mr. Gordon: Is the deck going to be part of this? It's an open deck, right?

Mr. Alarie: The A, B or C are not part of the appeal. It's only the second story on the D part because of the nonconforming setbacks from both Maple Circle and Richard Avenue.

Mr. Gordon: Okay.

Mr. Salerno: Is there anyone in attendance who would like to comment on this petition? Seeing no further comment, we'll take the matter under advisement and notify you of our decision.

### Decision

On May 31, 2005, the Shrewsbury Zoning Board of Appeals unanimously voted to grant the appeal of Robert and Monica Maher, 52 Maple Circle, Shrewsbury, MA, for a special

permit as required by the Town of Shrewsbury Zoning Bylaw, Section IV, Subsection B, to allow the construction of an addition upon property located at 52 Maple Circle maintaining the existing setbacks of said property.

The appellants' property is located at the corner of Maple Circle and Richard Ave. and is nonconforming in several regards, including its size, the existing structure's front yard setbacks from both streets and its westerly side yard setback. They propose to remove the garage that is attached to the westerly side of their home, which is situated only 5.7 ft. from the side lot line, and to construct in its place an addition housing a dining area and a great room. This new construction would be placed at a conforming side yard setback of 11 ft. The Mahers also propose to construct a second story addition over their existing living area and above the new dining area. This expansion would utilize the property's existing front yard setbacks of 28.2 ft. and 19.4 ft. from Maple Circle and Richard Ave., respectively.

Upon review of this appeal, the board concluded that the proposed alterations to and the vertical expansion of the subject residence would not materially change its nonconforming features. They noted that the changes would, in fact, eliminate a nonconforming side yard thereby bringing the premises more in line with current zoning. It was their opinion that the new structure, when completed, would complement the general character of many of the other homes within the Maple Circle neighborhood and that the expansion would not create any condition which would adversely affect area residents. It was, therefore, unanimously voted to grant the appeal as presented to the board.

#### Vote

Mr. Salerno	Yes
Mr. George	Yes
Mr. Gordon	Yes
Mr. Rosen	Yes
Mr. Confalone	Yes

PUBLIC HEARING: Alan Eppenstein, 302 Lake Street Shrewsbury, MA.

PURPOSE: To hear the appeal of Alan Eppenstein, 302 Lake Street, Shrewsbury, MA, for special permits as required by the Town of Shrewsbury Zoning Bylaw, Section IV, Subsection B, and Section VI, Table I, to allow the construction of an addition to be occupied as an in-law apartment upon property located at 302 Lake Street maintaining the existing setbacks of said property. The subject premises is described on the Shrewsbury Assessor's Tax Plate 40 as Plot 138.

PRESENT: Anthony M. Salerno, Chairman, Paul M. George, Melvin P. Gordon, Alfred C. Confalone, Ronald I Rosen and Ronald S. Alarie, Building Inspector.

Mr. Salerno opened the hearing by reading the advertisement as it appeared in the Worcester Telegram on May 16, 2005 and May 23, 2005.

Mr. Salerno: Please identify yourself for the record and make your presentation.

Mr. Eppenstein: My name is Alan Eppenstein. This is my daughter, Samantha.

Ms. Ramston: Samantha Ramston.

Mr. Salerno: I'm sorry Samantha; I didn't get your last name.

Ms. Ramston: Ramston, Samantha Ramston.

Mr. Salerno: Thank you.

Mr. Eppenstein: I want to make a second floor addition and just build upward.

Ms. Ramston: He's going to go with the main footprint of the house. We're not making it wider. We're just going up. Then we're going to put in three rooms, a bathroom, kitchen, parlor and a laundry room.

Mr. Salerno: You've got a note here that the elevation on the top ridge line is 24 ft.?

Ms. Ramston: Yes. It's 24 from the top of the roof down to the main floor.

Mr. Salerno: To the ground?

Ms. Ramston: To the ground, yes.

Mr. Gordon: So, the section over where the garage is, I assume that goes back to where the door and that lights are, that's not going to change?

Ms. Ramston: No. The garage is not getting touched.

Mr. Gordon: Basically, from where the two sliders are is where it's going up?

Ms. Ramston: It's not going over the two rooms that the old owner put on. It's just going on the main part of the house.

Mr. Gordon: Okay.

Ms. Ramston: There's an existing addition already there that the other owner had put on. We're not going over that. It's just going over the main part.

Mr. Gordon: Is that the one that's behind it?

Ms. Ramston: Yes. That's like their playroom.

Mr. Gordon: Okay.

Ms. Ramston: It had a Jacuzzi in that room, but they don't use it for that.

Mr. Eppenstein: I took that out and had that all cemented.

Mr. Rosen: You're aware of the requirements for the in-law apartment?

Ms. Ramston: Yes. We have to share the utilities.

Mr. Rosen: Well, it has to be a family member.

Ms. Ramston: Yes. I'm going to be living there.

Mr. Rosen: In the future, it can't be rented out or anything like that.

Mr. Eppenstein: No, I know that.

Ms. Ramston: The electricity and all of that's going to be all the same.

Mr. Gordon: We need a deed restriction also on the property that this is going to be an in-law apartment. Is that true, Ron?

Mr. Alarie: Well, the board's decision, if you choose to grant it, will be recorded at the Registry of Deeds and will contain that restriction.

Mr. Salerno: You understand that you have to be related by blood or marriage?

Mr. Eppenstein: Yes.

Ms. Ramston: Yes, I'm his daughter. The house isn't going to get sold.

Mr. Eppenstein: That's for sure. She's my youngest.

Mr. Salerno: Is there anyone in attendance who would like to comment on this petition? Seeing no further comment, we'll take the matter under advisement and notify you of our decision.

### Decision

On May 31, 2005, the Shrewsbury Zoning Board of Appeals unanimously voted to grant the appeal of Alan Eppenstein, 302 Lake Street, Shrewsbury, MA, for special permits as required by the Town of Shrewsbury Zoning Bylaw, Section IV, Subsection B, and Section VI, Table I, to allow the construction of an addition to be occupied as an in-law apartment upon property located at 302 Lake Street maintaining the existing setbacks of said property.

The appellant proposes to construct a second story addition over a portion of the single family dwelling situated upon the subject premises which would be occupied as an in-law

apartment. The expansion would maintain the structure's existing front yard setback of approximately 25 ft. from the westerly sideline of Lake Street.

Upon review of this appeal, the board found that the vertical expansion of a portion of Mr. Eppenstein's home maintaining the aforementioned setback would not materially alter the nonconforming features of this property. They also found that the design and use of the second floor area as an in-law apartment was in harmony with the intent of the Zoning Bylaw in permitting such accessory living accommodations arranged within or attached to a single family home. It was their opinion that, as presented to the board, the granting of the special permits and the subsequent construction would not create any condition which would adversely impact the welfare of either the general public or of area residents. It was, therefore, unanimously voted to grant the appeal as presented to the board subject to the following:

1. The occupancy of the in-law apartment shall be limited to three or less individuals, all of whom shall be related to the principal residents of the subject premises.
2. The rights authorized by the issuance of the special permit relative to the in-law apartment are restricted to the ownership and the occupancy of the subject premises by the appellant.

Vote

Mr. Salerno	Yes
Mr. George	Yes
Mr. Gordon	Yes
Mr. Rosen	Yes
Mr. Confalone	Yes

PUBLIC HEARING: Robert and Judith Defino, 21 Farmington Drive, Shrewsbury, MA.

PURPOSE: To hear the appeal of Robert and Judith Defino, 21 Farmington Drive, Shrewsbury, MA, for a variance to the Town of Shrewsbury Zoning Bylaw, Section VII, Table II, Minimum Side Yard Requirement, Rural B District, to allow the construction of an addition 25 ft. from the side lot line of property located at 21 Farmington Drive. The subject premises is described on the Shrewsbury Assessor's Tax Plate 41 as Plot 15-11.

PRESENT: Anthony M. Salerno, Chairman, Paul M. George, Melvin P. Gordon, Alfred C. Confalone, Ronald I Rosen and Ronald S. Alarie, Building Inspector.

Mr. Salerno opened the hearing by reading the advertisement as it appeared in the Worcester Telegram on May 16, 2005 and May 23, 2005.

Mr. Salerno: Please identify yourself for the record and make your presentation.

Mr. Defino: Yes, I'm Robert Defino of 21 Farmington Drive in Shrewsbury.

I guess I'm looking at two plot plans, mine and one from the town. We have a side entrance going into the house, but it doesn't show the landing. What we're doing is adding a little bit larger landing with a roof to it. That's going to be an 8 by 11 platform with a roof that matches the front of the house. Actually, there's a landing there of about 4 ½ to 5 ft. We're asking for a setback of 25 ft. versus the current 28 ft. because there is a landing there that the contractor put on the house, I guess, as it was being finished. It didn't show up on the original town plot plan. But, I guess, it's just the foundation that they're looking at here.

Mr. Salerno: Ron, would that be any different than a deck, the original?

Mr. Alarie: The landing and stairway would be exempt but now, with a roof over it, it is subject to the setback requirement.

Mr. Gordon: This says "a porch."

Mr. Alarie: Is it enclosed as well?

Mr. Defino: No.

Mr. Alarie: With the roof area of that size, that would still become subject to the setback requirement.

Mr. Salerno: Right.

Mr. Gordon: It's a small porch right now. It sits to the back of the house.

Mr. Defino: Yes, it's a small porch right now. All we're doing is roofing it and making it a little wider and 3 ft. deeper.

Mr. Salerno: That's what I'm saying though. As a straight, open porch, he didn't have to worry about the side yard on that. It was just a straight deck. You're going to put a roof on and you want to expand it. That's what you want to do?

Mr. Defino: Yes.

Mr. Salerno: Okay, but it's going to be open air?

Mr. Alarie: I think it's open from what he is presenting tonight. Again, it shows on the plot plan to be "a proposed porch." I assumed that it was to be an enclosed structure based on what shows on the plan. But, irrespective of the walls, if it still has a roof over it, it must comply with the setback.

Mr. Salerno: Yes.

Mr. Gordon: Is this going to be a 3-season room or just an open porch with a roof?

Mr. Defino: No. I have a 3-season room on the back of the house.

Mr. Gordon: On the back of the house. I see that.

Mr. Salerno: This has a railing. The only thing that changes this from an open deck is the roof, basically?

Mr. Defino: That's right.

Mr. Salerno: Right.

Mr. Defino: I'm just going to put a roof on it that matches the front porch of the house.

Mr. Rosen: What's the size of the deck?

Mr. Defino: Pardon me?

Mr. Rosen: What is the size of the deck?

Mr. Defino: Eight by eleven.

Mr. Gordon: What's it now, about 4 by what?

Mr. Defino: It's 4 by 4. That's really the side entrance with a sidewalk going down the side of the house.

Mr. Salerno: Do any board members have questions? Is there anyone in attendance who would like to comment on this petition? Seeing no further comment, we'll take the matter under advisement and notify you of our decision.

Mr. Defino: What happens now?

Mr. Alarie: What happens is the board will vote on it tonight. We have to do the minutes and write the board's decision. That will go out to the abutters. That will initiate the twenty day appeal period.

Mr. Defino: Twenty days? I'm just trying to line up the contractor. That's kind of what I'm more concerned about right now. Thank you.

The decision of the board is on the following page.

#### Decision

On May 31, 2005, the Shrewsbury Zoning Board of Appeals unanimously voted to grant the appeal of Robert and Judith Defino, 21 Farmington Drive, Shrewsbury, MA, for a variance to the Town of Shrewsbury Zoning Bylaw, Section VII, Table II, Minimum Side Yard Requirement, Rural B District, to allow the construction of an addition 25 ft. from the side lot line of property located at 21 Farmington Drive.



The board reviewed the appellants' plans to construct an open porch to the southerly side of their home and found that, in this instance, the literal application of the minimum provisions of the Zoning Bylaw would impose a substantial hardship to the Definos. It was their opinion that the reduction of the minimum side yard setback by 5 ft. would neither materially depart from the intent of the bylaw nor adversely impact the welfare of either the general public or area residents. It was, therefore, unanimously voted to grant the appeal as presented to the board.

#### Vote

Mr. Salerno	Yes
Mr. George	Yes
Mr. Gordon	Yes
Mr. Rosen	Yes
Mr. Confalone	Yes

PUBLIC HEARING: Howard Garshman, 677 South Street, Shrewsbury, MA.

PURPOSE: To hear the appeal of Howard Garshman, 42 Treetop Park, Westborough, MA, for a variance to the Town of Shrewsbury Zoning Bylaw, Section VII, Table II, Minimum Side Yard Requirement, Rural A District, to allow the construction of an addition 10 ft. from the side lot line of property located at 677 South Street. The subject premises is described on the Shrewsbury Assessor's Tax Plate 44 as Plot 11-22.

PRESENT: Anthony M. Salerno, Chairman, Paul M. George, Melvin P. Gordon, Alfred C. Confalone, Ronald I Rosen and Ronald S. Alarie, Building Inspector.

Mr. Salerno opened the hearing by reading the advertisement as it appeared in the Worcester Telegram on May 16, 2005 and May 23, 2005.

Mr. Salerno: Counsel, would you identify yourself and your client and make your petition.

Atty. Ricker: Thank you Mr. Chairman and members of the board. My name is Richard Ricker. I'm an attorney with an office in Shrewsbury. Seated next to me is Howard Garshman who owns the property at 677 South Street.

Mr. Garshman is requesting permission to build an addition to the left side of his house as one would look at it from South Street, which is the southerly side of the house. The addition would extend out from the main frame of the house 20 ft. He would not be adding any bedrooms or anything of that nature to the house. It would be expanding upon the bedroom on the second floor and adding a study area off of the living room on the first floor as you can see from the plans in front of you.

Basically, if you look at this lot from the street, you would note that it slopes upwards. It goes uphill from the street. There is a substantial amount of ledge outcroppings on the

property directly to the rear of his house. Effectively, everywhere this house sits going up the hill has ledge attached to it or it is underlying.

I know that some of you have gone to the property to look at it. There's a small wall that was built directly in the back yard about maybe 10 ft. off of the rear of the house, 10 or 15 or maybe 20 ft. In order for him to put drainage in for that wall, he had to actually do some blasting and cutting of the ledge to do that.

In order for him to build an addition he really needs to go sideways if he can. It does present a hardship that is incidental to this particular lot. As you can see from the tax plate, he is bounded on the south by a common drive that serves three homes further up in the back of the house. As you can see from that, the separation from the next nearest house would still be a substantial distance. It would be approximately three times the distance in the neighborhood from house to house relative to any other house. So, as I would suggest, I would say that there wouldn't be any derogation from the bylaw because you still have a substantial separation of buildings and houses in this particular lot situation. He is dealing with something that is incidental to his own lot. The house to the south of him, the slope of the hill does go downwards somewhat.

He is the only one in the particular position where he is at there. In fact, the original house placement, I would suggest that when you walk up on the property, you can see that it was probably dictated by the ledge on the property. The other houses to the right are situated further back from the street. It doesn't seem that they were affected in the same manner.

I would suggest, respectfully, that there would be no detriment to the neighbors in as much as you still have substantial building separation here. You have a common driveway servicing three houses that, basically, you can't even see from this property or from this house. The house directly to the right is still a substantial distance away, I mean to the left, is still a substantial distance away. I would suggest that there wouldn't be any nuisance or other offensive nature to this addition at all.

With that, if you have any questions, we will try to answer them.

Mr. Confalone: So, basically, the hardship you're stating here is the fact that there's so much ledge behind the house that it would be just too costly to blast it all out or hammer it all out and that's why you're putting the addition out to the side?

Atty. Ricker: Yes. In fact, there's been some testing done there to see what the location of the ledge is. To the left of the house, he's not dealing with that kind of ledge at all, but to the rear he is. He does plan on, incidentally, moving into the house himself. He presently has tenants in it. The reason for making this request is that he wants to live in the house himself with his family.

Mr. Gordon: On your drawing, to the top left, is that a balcony?

Atty. Ricker: That's a balcony off of the rear of the house which is off of the bedroom.

Mr. Gordon: You need to correct the spelling.

Atty. Ricker: Where am I? Oh yes, the "balony."

Mr. Gordon: Thank you. The master bedroom and the bedroom next to it, is that going to be part and parcel or is that another room?

Atty. Ricker: That's existing. The other bedroom was, as you're looking at that where walk in closet is now, that would be part of the master bedroom.

Mr. Gordon: Okay.

Atty. Ricker: So, once again, he's not adding any bedrooms.

Mr. George: Is that a driveway or is that a cul-de-sac that's abutting this lot?

Mr. Gordon: It's a common driveway

Ms. Smith: Represented by me.

Mr. Taricco: That's why I'm here.

Mr. Salerno: Okay folks, we'll do that in a minute. The only reason we do it that way sir is so that we can have records because Linda has a hard enough time getting us when we talk for the audio minutes. We'll get to it in an orderly fashion. There's no problem, we want your input.

Are there any other questions before we open it up? Sir, you have a question? Please just identify yourself for the record.

Mr. Taricco: My name is Mark Taricco. I live on the right side.

Mr. Salerno: Okay.

Mr. Taricco: I can certainly attest to the ledge.

Mr. Gordon: Does the right side have a number?

Mr. Taricco: The right side is 679.

Mr. Gordon: Okay, thank you.

Mr. Taricco: When I got this letter, I didn't see anything about where it was located. I came as an interested person and I can see that it's on the other side of the house. That's the garage there, correct? The lots are oddly shaped and I don't have any problem with this.

Mr. Salerno: Does that answer your questions?

Mr. Taricco: Yes.

Mr. Salerno: The fact is that it's on the other side of your house?

Mr. Taricco: It's on the other side of my house, yes.

Mr. Salerno: You don't feel that it adversely affects you?

Atty. Ricker: I believe that he just said that he didn't have any problem with it.

Mr. Salerno: I'm just getting it on the record.

Mr. Taricco: Yes.

Ms. Smith: My name is Diane Smith. I live at 675B South Street. I'm one of the three houses on the common drive. I too came to see what it was going to look like and I came to see Howard.

Mr. Salerno: Would you like to take a look at that?

Ms. Smith: Sure.

(Atty. Ricker showed the plans to Ms. Smith)

Ms. Smith: Do you expect to take down any trees?

Mr. Garshman: No.

Ms. Smith: Okay.

Mr. Salerno: The question was, are you going to take down any trees and your response was "No."

Mr. Garshman: No. I've got some shrubs along the side of the house. Those may have to come out.

Ms. Smith: Yes.

Mr. Garshman: Not the trees on the tree line.

Mr. Salerno: So, we can build that into the decision?

Atty. Ricker: Oh, sure.

Mr. Garshman: There's no tree removal at all.

Ms. Smith: The other thing, we're not sure that our driveway will withstand heavy equipment.

Mr. Garshman: They'll be coming up over our yard.

Ms. Smith: Okay. All right.

Atty. Ricker: That's not a problem either if you wanted to insert that. Obviously, we would need a neighbor's permission to use their property.

Ms. Smith: Right. I mean, pickup trucks could probably work, but I'm thinking of cement trucks and big things.

Mr. Gordon: I've never heard them described as "big things."

Mr. Confalone: Things that weigh a lot.

Mr. Garshman: I think I've got a decent concept of what your questions are.

Mr. Confalone: I don't think that you have any ability to access their property without their consent. So, that's a non-issue.

Mr. Garshman: I know what she's talking about.

(Mr. Garshman showed the plans to Ms. Smith and discussed them with her)

Ms. Smith: Okay. So now, as I'm looking at this right here, are these the two new windows?

Mr. Garshman: Yes.

Ms. Smith: So, this is the old bedroom that's being expanded to this bedroom?

Atty. Ricker: That's right.

Ms. Smith: Okay. That's a great spot for a hot tub. Thank you very much.

Mr. Salerno: Is there anyone else in attendance who would like to comment on this petition? Which of the three houses, ma'am, are you in?

Ms. Smith: I'm at 675B.

Atty. Ricker: Would that be the middle of the cul-de-sac?

Ms. Smith: As you go to the top of the hill, I'm the house on the right. There's one straight ahead and there's one on the left.

Atty. Ricker: She would be directly to the rear of our property.

Mr. Salerno: Okay.

Mr. George: Just for the record, right now you reside in Westborough and you plan on moving into this residence?

Mr. Garshman: Yes, sir.

Mr. Salerno: We'll retain one set of plans.

Atty. Ricker: Sure.

Mr. Salerno: Seeing no further comment, we'll take the matter under advisement and notify you of our decision.

#### Decision

On May 31, 2005, the Shrewsbury Zoning Board of Appeals unanimously voted to grant the appeal of Howard Garshman, 42 Treetop Park, Westborough, MA, for a variance to the Town of Shrewsbury Zoning Bylaw, Section VII, Table II, Minimum Side Yard Requirement, Rural A District, to allow the construction of an addition 10 ft. from the side lot line of property located at 677 South Street.

The board reviewed the appellant's proposal to construct an addition to the westerly side of the single family dwelling situated upon the subject premises and found that there are several features affecting this parcel that warrant the granting of the relief. Primary of the site conditions is the predominance of ledge to the rear of the structure that precludes expansion of the residence in that direction. Secondly, the topography of the lot slopes significantly upwards from the road to its rear lot line and, lastly, its westerly boundary abuts a common driveway that provides access to three homes that are located well to the rear of Mr. Garshman's property. It was the board's opinion that, under such circumstances, the reduction of the side yard requirement to 10 ft. in this instance would not seriously derogate from the intent of the Zoning Bylaw and that the construction and occupancy of the proposed addition would not adversely impact the welfare of either the general public or area residents. It was, therefore, unanimously voted to grant the appeal as presented to the board subject to the restriction that no trees which are larger than 6 in. in diameter that are located within the minimum 30 ft. side yard setback adjacent to and along the full length of the aforementioned westerly side lot line may be removed from the parcel.

#### Vote

Mr. Salerno	Yes
Mr. George	Yes
Mr. Gordon	Yes
Mr. Rosen	Yes
Mr. Confalone	Yes

PUBLIC HEARING: John and Susan Haffty, 9 Valley Forge Drive, Shrewsbury, MA.

PURPOSE: To hear the appeal of John and Susan Haffty, 9 Valley Forge Drive, Shrewsbury, MA, for a variance to the Town of Shrewsbury Zoning Bylaw, Section VII, Table II, Minimum Side Yard Requirement, Residence A District, to allow the construction of an addition 17 ft. from the side lot line of property located at 9 Valley Forge Drive. The subject premises is described on the Shrewsbury Assessor's Tax Plate 1 as Plot 3-17.

PRESENT: Anthony M. Salerno, Chairman, Paul M. George, Melvin P. Gordon, Alfred C. Confalone, Ronald I Rosen and Ronald S. Alarie, Building Inspector.

Mr. Salerno: Please identify yourself for the record and make your presentation.

Mr. Kehm: My name is Jeff Kehm.

Mr. Salerno: And you're representing?

Mr. Kehm: I'm representing John and Susan who cannot be here tonight. I'm their architect.

Mr. Salerno opened the hearing by reading the advertisement as it appeared in the Worcester Telegram on May 16, 2005 and May 23, 2005.

Ms. Smith: Again sir, just for the record, your name and make your presentation.

Mr. Kehm: Sure, my name is Jeff Kehm and I'm an architect. My company is Faber Design, F a b e r. Tonight I have a few boards that I would like to show you. I also have a package for you that will contain photographic information that is on the boards as well as a letter of support for abutting neighbors.

What we're proposing to do here is to essentially expand the existing garage on the right-hand side of the house. If you can see these images here, they're a little small, this is their house as it stands presently. The garage is here. We're proposing to expand the garage out 6 ft. Three feet of that would enter into the 20 ft. setback line on the property. The intention is to place a master bedroom suite on top of the garage, but more specifically and this is really the motivator of this design, to create a mudroom within the additional garage dimension to provide access to the house as opposed to just walking right into the kitchen. There is no place to put wet boots and that kind of thing.

In terms of the location of the addition, as I said, the mudroom is really the prime motivator here. To go to the back of the house would be a challenge for us no matter for the bedroom extension because, as you can see here, they have a pool in the back yard. It really doesn't allow us to build over into that area that would be within the property lines.

Mr. Confalone: Currently, you have the existing two-car garage?

Mr. Kehm: Correct.

Mr. Confalone: You plan on building up on top of that? Are you going to add onto the end of that or how are you going to do that?

Mr. Kehm: Yes. I mean, here's an image of what we propose to do.

Mr. Confalone: Right, I see that and I see how it exists. I'm just kind of curious how you're going to do that.

Mr. Kehm: What essentially we'd be doing is taking that two-car garage, if this were possible but it's not, and slide it over 6 ft. The space that's created between the existing house and the garage would be the mudroom area. You can see that in the plan here.

Mr. Gordon: It's going to remain a two-car garage? It's not going to become a three-car garage?

Mr. Kehm: No, no. It remains a two-car garage. You can see here, this is proposed and this is the existing house right here. This is the existing roofline here. We're really just shifting the garage to the right and creating a mudroom with an entryway and closet space that enters into the kitchen area here. This space above, obviously, is a master bedroom with, obviously, a closet. We would redo the bathroom area here.

Mr. Gordon: Where's the master bedroom now?

Mr. Kehm: It's this room right here.

Mr. Salerno: What about above the family room?

Mr. Kehm: Above the family room is not an option in this case because one of the prime programmatic motivators for the addition is to actually create an area where they can come in from the garage and get rid of their wet clothing without actually stepping into the kitchen area right here, which is right by the dining room. As well, we'd have to carve up these rooms to create access to the master bedroom. At that point in time, they wouldn't be usable bedrooms any longer.

Mr. George: According to that drawing, isn't that a mudroom right there, that entryway?

Mr. Kehm: This?

Mr. George: No, to the right.

Mr. Gordon: It's going to be.

Mr. Kehm: This is the proposed plan. I don't have an existing condition plan here. Currently, if you were to take this garage and just sandwich this wall beside the wall



here, that's what they have. Obviously, this is a little bit far away, but we're really just adding this slot of space here.

The other views that you have here on this drawing show, coming from the left-hand side of the road and then to the right-hand side, what you would see from the road.

Mr. George: So, how do you enter into the kitchen? Where's the doorway right now?

Mr. Kehm: It's right here. This is the existing door.

Mr. George: It's off of the side of the house where the two-car garage is?

Mr. Kehm: Right.

Mr. George: Okay.

Mr. Gordon: So, you're going right from the two-car garage into the house?

Mr. Kehm: Exactly.

Mr. Gordon: You want to go from the two-car garage into a mudroom?

Mr. Kehm: Yes, into a mudroom.

Mr. Gordon: And, then into the house?

Mr. Kehm: Yes, to have a transition zone as well. This is typically where guests would arrive. One of the reasons that I presented the images here in the photographs, is that what I'm trying to present is that I don't see that there would be any detriment in the design concepts that the zoning ordinance is designed to uphold. By adding this additional space to the house, I believe that the integrity of the neighborhood would remain the same and there wouldn't be any diminishment of what the zoning ordinance is trying to produce.

Mr. Rosen: What's the hardship for the variance?

Mr. Kehm: The hardship here is that, essentially, we can't build back because there's a pool. That's about the best that I can give for a hardship.

Mr. Rosen: Who put the pool in?

Mr. Kehm: Pardon me?

Mr. Rosen: Who put the pool in?

Mr. Kehm: I have no idea who put it in.

Mr. Rosen: Was your client the original owner?

Mr. Kehm: I have no idea who put the pool in.

Mr. Confalone: It seems that, really what's tripping you or that your only need for the variance here is the mudroom, right? I mean, if you built over the existing garage, you'd have your room and all of that. It's really their desire to put a mudroom in that's kicking it out over setback. What is it, 20 ft.?

Mr. Kehm: Exactly.

Mr. Confalone: You're 3 ft. off, right?

Mr. Kehm: Right. In terms of hardship, obviously there's not a big boulder in the back yard. It's conducive to the site. Obviously we have a pool. I don't know when the pool was placed there or who put it in, but essentially what I guess I'm hanging my hat on here is the fact that, with the granting of the variance, we would still be, and especially with the images here, the new addition 3 ft. over would no affect the neighborhood.

Mr. Salerno: Well, that's just one factor.

Mr. Kehm: It is one.

Mr. Salerno: I think what you were asked though by Mr. Rosen is what is the recognizable hardship that we're to take into consideration to grant the variance or relief from the zoning bylaw?

Mr. Kehm: Exactly.

Mr. Salerno: Well no. I know that's exactly what the statute requires. What I'm saying to you is, what is your hardship that you want us to consider?

Mr. Kehm: The hardship here is, essentially in order to meet the clients programmatic requirements, meaning that they have a desire to have a mudroom.

Mr. Salerno: They want a mudroom. Translate that. They want a mudroom and how does that relate to the question of hardship?

Mr. Kehm: That's the only way that I can do it. If I have a master bedroom on the back of the house, if I have a master bedroom on the side of the house, it still doesn't meet the programmatic needs. So, really the hardship here is satisfying programmatic needs.

Mr. Confalone: You can't put a mudroom anywhere but there. That's your hardship, right?

Mr. Kehm: Exactly.

Mr. George: Couldn't you incorporate the mudroom within the garage area without going into the side setback?

Mr. Kehm: The truth is that it's an existing two-car garage. It's a relatively narrow garage.

Mr. Gordon: It's awfully narrow on the right side.

Mr. Kehm: As an architect on the case, theoretically, yes you could do that, but we would have a very tight issue for the cars. In fact, right now it's tighter than I would desire it to be. Really, what I'm doing is duplicating the existing width, the left to right dimension of the garage, and adding a minimum dimension to make a comfortable entry into the mudroom.

Mr. George: What is the dimension of the mudroom that you want to build?

Mr. Kehm: It's 5 ft., 6 in. in interior width.

Mr. Confalone: So, if you shrunk that by 3 ft., it would be cutting off the door.

Mr. George: I have a two-car garage where I live and I have three cars in it and I still incorporated a mudroom into that two-car garage. So, there is a way of doing it.

Mr. Kehm: Well, we have 21 ft. on the inside. The typical car of today, the maximum is probably going to be 8 ft., but call it 7 ft. So, that's 14 ft. of car width. Ideally you'd have 3 ft. on either side, which is another 9 ft. So, already we're over that dimension. Again, I'm using the architectural graphic standards here. Could we fit all of this in? Yes. Could we actually open the doors conveniently for some of the cars? I have a feeling that it would be a challenge. I don't know that it would satisfy the owners need ultimately.

Mr. Salerno: I just want to hear one more time. What's the phrase for the hardship? It doesn't meet the client's what?

Mr. Kehm: Their programmatic needs.

Mr. Salerno: Their programmatic needs. I have to credit you. That's the first time I've heard it and I've been on this board an awful long time. That's the first time that I've heard that as a hardship. So, it definitely deserves an "A" for creativity.

Mr. Kehm: I do my best.

Mr. Salerno: Is there anyone in attendance who would like to comment on this petition? It appears to meet all of their programmable needs too, I guess. Does anybody else want to comment?

Mr. Gordon: What is the letter that you have?

Mr. Salerno: There's a letter here signed by, I think, several neighbors that was submitted. I think it's three houses. Two people from number eleven, one from ten and one from seven. They signed the letter.

Mr. Kehm: The package that I just submitted to you includes this drawing and has an additional signature. I don't know what the impact will be. Basically, the abutters on each side, the neighbors across the street and the neighbor on the rear yard will be affected.

Mr. Salerno: Seeing no further comment, we'll take the matter under advisement and notify you of our decision.

#### Decision

On May 31, 2005, the Shrewsbury Zoning Board of Appeals unanimously voted to deny the appeal of John and Susan Haffty, 9 Valley Forge Drive, Shrewsbury, MA, for a variance to the Town of Shrewsbury Zoning Bylaw, Section VII, Table II, Minimum Side Yard Requirement, Residence A District, to allow the construction of an addition 17 ft. from the side lot line of property located at 9 Valley Forge Drive

Upon review of this appeal, the board found that there were no conditions affecting the subject property relating to its size, shape, topography, soil conditions or the existing building situated thereon that would warrant the granting of the relief requested. It was their opinion that, in this instance, the reduction of the side yard requirement as proposed would derogate from both the intent and the purpose of the Zoning Bylaw. Finding that the appeal did not satisfy the statutory requirements for the granting of a variance, the board unanimously voted to deny the relief requested.

#### Vote

Mr. Salerno	No
Mr. George	No
Mr. Gordon	No
Mr. Rosen	No
Mr. Confalone	No

May 31, 2005

PUBLIC HEARING: Richard and Diane Nolli, 67 Summer Street, Shrewsbury, MA.

PURPOSE: To hear the appeal of Richard and Diane Nolli, 67 Summer Street, Shrewsbury, MA, for a special permit as required by the Town of Shrewsbury Zoning Bylaw, Section VI, Table I, to allow the construction of an addition to be occupied as an in-law apartment upon property located at 67 Summer Street. The subject premises is described on the Shrewsbury Assessor's Tax Plate 22 as Plot 334-1.

PRESENT: Anthony M. Salerno, Chairman, Paul M. George, Melvin P. Gordon, Alfred C. Confalone, Ronald I Rosen and Ronald S. Alarie, Building Inspector.

Mr. Salerno opened the hearing by reading the advertisement as it appeared in the Worcester Telegram on May 16, 2005 and May 23, 2005.

Mr. Salerno: Please identify yourself for the record and make your presentation.

Mr. Nolli: My name is Richard Nolli. My wife couldn't make it here tonight. I live at 67 Summer Street. I have a set of plans that I think you have. There are two plans in there. What we're proposing to do is to do an addition staying within our sidelines, our setbacks, to create an in-law addition of approximately 800 sq. ft. with a one-car garage. It's the same elevation as our first floor with no second floor addition.

Mr. Gordon: Where's the garage going to be?

Mr. Nolli: On the right-hand side.

Mr. Gordon: So, you're going to come up the front of the house?

Mr. Nolli: Yes.

Mr. Gordon: Okay.

Mr. Nolli: I can actually show you.

Mr. Gordon: I see it now.

Mr. Nolli: This right here would be the garage.

Mr. Gordon: You're going to come up from here.

Mr. Nolli: Yes. This is the garage and that's the new driveway.

Mr. Gordon: Okay. This is all upland?

Mr. Nolli: Yes.

Mr. Gordon: I remember that you had some situations with conservation on the other side, right?

Mr. Nolli: Yes.

Mr. Gordon: So, you can't put it on the other side.

Mr. Nolli: They actually suggested that area. We weren't actually sure how it would look. We've been working pretty aggressively with the architect and they suggested to go to this side.

Mr. Salerno: Who suggested the areas?

Mr. Nolli: Conservation. We've been working with the architect. We're very concerned as far as how it's going to affect the look of the house. As far as the setbacks, we're actually building it so that we don't have to go for a variance. We're well within our setbacks, our sidelines.

Mr. George: You know that, for an in-law apartment, you can only have blood relatives in there?

Mr. Nolli: Right.

Mr. George: At least you'll have someone there to take care of your lawn for you.

Mr. Nolli: Yes.

Mr. Gordon: I'm sure that the driveway is going to take up half of the lawn.

Mr. Nolli: There's still the backyard that he could take care of.

Mr. Gordon: Okay.

Mr. Salerno: This is an in-law apartment to accommodate who?

Mr. Nolli: My father-in-law and my mother-in-law.

Mr. Salerno: Are there any special concerns. I mean, they're there because of aging or health or a combination?

Mr. Nolli: Their health, their age and health. It's a combination. That was one reason why we wanted the garage up there because they can't do stairs well. There will probably be a maximum of about two stairs in the garage to get into the one-floor addition.

Mr. Gordon: Okay. So, this is going to be one floor, not two?

Mr. Nolli: Right. I don't have a picture of it, but if you were to see our house, there are two different rooflines on the house. This will be the same as the lower roof.

Mr. Salerno: Are you the only children in the area?

Mr. Nolli: No, there is one other. Their son lives on the other side of town.

Mr. Salerno: The only reason that I ask that question, again, is because there are restrictions on the use of in-law apartments to blood relatives or marriage relatives so, if in fact, your in-laws move to Florida and somebody else in the family would be occupying it, you would be limited to those restrictions.

Mr. George: How many square feet will the in-law apartment be?

Mr. Gordon: Did you say 800?

Mr. Nolli: Just under 800 sq. ft. It's just going to be a one-bedroom. Then there will be one large room that will occupy the kitchen, an eating table and living room and one bathroom and then the one-car garage.

Mr. Salerno: Is there anyone in attendance who would like to comment on this petition?

Ms. Starfas: I'd like to speak.

Mr. Salerno: Sure. Would you just tell us your name, ma'am.

Ms. Starfas: Nancy Starfas, 41 Patton Road. I also have a question. Does the 800 sq. ft. include the garage or is the garage in addition to it.

Mr. Nolli: No, that wasn't the total.

Ms. Starfas: So, what's the total that you're building?

Mr. Nolli: The garage will be 15 by 26. This is actually your backyard so the lot line goes like this. This is your yard right here.

Mr. Starfas: Okay.

Mr. Nolli: What we did was we pushed everything back so that we would end up having some sort of a yard back here for them.

Mr. Salerno: Is there any way for you to put that on an easel? The only reason that I say that is that there are a number of people who want to see it.

Mr. Nolli: I can try.

Mr. Salerno: Yes. Maybe you can then explain it. Turn it sideways. Now you can address these folks' questions again.

Mr. Nolli: Can you see it?

Mr. Salerno: Ms. Starfas, your question was what exactly?

Ms. Starfas: My original question was does the 800 sq. ft. include the garage and he said it does not. That's the addition.

Mr. Salerno: Okay.

Mr. Nolli: This would be your backyard right here. Obviously, it's going to be finished the same as the rest of the house, the same color. There aren't going to be any changes. It's going to look just like the rest of the house. Again, it's only one floor. We're not going up with a second story. There will be all grass back here. I don't know what's

going to happen with the forsythias that are between you and I. Obviously, we'll have to talk about that. I don't know if a fence is in order at that point.

Mr. Starfas: Well, yes, you could put a fence up which would be fine to save those, but those are right on our border.

Mr. Nolli: Right.

Mr. Salerno: Sir, would you just identify yourself.

Mr. Starfas: Oh, I'm sorry. I'm Nancy's husband. Our backyard abuts his side yard.

Mr. Gordon: Whose land are the flowers on?

Ms. Starfas: They're right on the border.

Mr. Gordon: They're on both of your lots?

Ms. Starfas: They're sort of a lot line.

Mr. Starfas: What's the precedence on that? We've been there 33 years and so have these forsythias.

Mr. Salerno: Well, if the lot line runs through the trees, you each have a preparatory right to the tree. There may be an issue about removing them.

Mr. Nolli: We'll work that out. We've talked about it before.

Mr. Starfas: So, the garage will be on the same level?

Mr. Nolli: The same level as the living space, yes.

Mr. Starfas: Okay. Do you have an idea, size-wise, of what we're looking at and what the dimensions are of that?

Mr. Nolli: Off of my house, it will end up being 53 ft.

Mr. Starfas: Fifty-three feet going up towards the George's house?

Mr. Nolli: Towards the George's house, right.

Mr. Starfas: The garage would be facing your driveway?

Mr. Nolli: Right. When they come down our driveway, they can go up their driveway and go right into the garage.

Mr. Starfas: Your driveway's down below. How are you going to work that out?



Mr. Nolli: We're going to cut the grade down. We're trying to minimize the amount of steps that they have to take.

Mr. Starfas: So, you'll have to grade up?

Mr. Nolli: We'll grade up and we'll do retainer walls along the side of the driveway.

Mr. Starfas: What affect is there on the water stream?

Mr. Nolli: To the wetlands?

Mr. Starfas: Yes.

Mr. Nolli: We're going through conservation. That's the map of conservation.

Mr. Gordon: The wetlands are on the other side of your driveway, right?

Mr. Nolli: Yes.

Ms. Starfas: Yes. In fact, there was a stream right where he's putting that. At one point in time, there was a stream right there.

Mr. Nolli: No, it was further down, wasn't it?

Ms. Starfas: No, my kids used to play right there in his front yard.

Mr. Nolli: Really? There is a stream now, but it's in the wetlands.

Ms. Starfas: Oh, I'm sure it is, but at one point in time there was one very close because the kids and I used to play in it.

Mr. Salerno: I would suggest folks, because you're going to work it out down the road, you ought to photograph the trees, their locations, their sizes and where they are currently so that when you do try to resolve that issue there will be a permanent record.

Mr. Starfas: Yes. There really isn't a big issue about it.

Mr. Salerno: Okay. Then disregard that.

Ms. Kelleher: It would be nice if he could save some of them.

Mr. Salerno: Ma'am, would you just identify yourself?

Ms. Kelleher: Andrea Kelleher.

Mr. Gordon: Where do you live?

Ms. Kelleher: I live at 43 Patton Road. We're the house next to him. I'm not familiar with the plans so I have no idea where they're located.

Mr. Nolli: You're down on this end over here. This is the way the property goes at an angle. Their house stops right around here and yours is right down here. Actually, you'll barely see any of it.

Ms. Kelleher: Our only concern is that is there going to be a lot of water drain-off because we have a lot of water?

Mr. Nolli: There shouldn't be any. There shouldn't be any. We're not changing the grade at all. The same backyard that's there now is what will be their backyard. It will be the same.

Mr. Starfas: Would there be a lot of excavating for the cellar?

Mr. Nolli: Yes. There will be a full cellar.

Ms. Kelleher: How close is it to the stream?

Mr. Nolli: That's down close to yours, down towards your house, down the back side. We addressed that issue when we built the house.

Mr. Salerno: Yes.

Ms. Starfas: If Mr. Nolli and his wife decide to sell their house after his in-laws move to Florida, is the zoning the same. If someone buys that house, is it for in-laws only or can they then rent it to anybody?

Mr. George: No.

Ms. Starfas: It's always an in-law?

Mr. Salerno: Unless we put a provision on it.

Ms. Starfas: And how would that happen?

Mr. Salerno: By the language of the decision to have it run with their occupancy.

Mr. Starfas: He's in a single family area? It's not zoned for multifamily, right?

Ms. Starfas: That would change the nature of our neighborhood to all of a sudden have it for rental.

Mr. George: They can't use it for rental.

Mr. Rosen: It would never be for rent. It can only be used for in-laws.

Ms. Starfas: Mr. Salerno just said that, unless he puts or you put a zoning requirement for that, it could change. So, do you do that?

Mr. Salerno: No, no. We don't put any new zoning on it.

Mr. Gordon: This is a special permit.

Mr. Salerno: It's a special permit.

Mr. Gordon: With a special permit, we can have reasonable time and reasonable conditions placed on it.

Mr. Salerno: We can place sunset provisions on it.

Ms. Starfas: So, it's a possibility?

Mr. Salerno: It's a special permit.

Mr. Alarie: I think the question is, can the board incorporate in anything that would be granted that would allow its use as a two family.

Mr. Gordon: No.

Mr. Salerno: No, no, but I think we're talking about a restriction on how long it can be an in-law apartment.

Mr. Alarie: Again, I think that she was concerned that it could be used for a two family later on based on conditions that may later change.

Ms. Starfas: After he sold it.

Mr. Salerno: Or, if it's sold, will it still be an in-law apartment? Is that your question?

Ms. Starfas: It is my question.

Mr. Starfas: So, you're saying that it would always be an in-law apartment?

Ms. Starfas: Unless somebody came up and asked for a special provision, is that what you said?

Mr. Alarie: They would need a variance in order to create a two family home here.

Ms. Starfas: So, we would be going through this all over again at that point in time?

Mr. Alarie: Correct.

Mr. Salerno: For a two family?

Ms. Starfas: For a two family.

Mr. Gordon: I'll bet you that there would be many, many more neighbors here.

Mr. Salerno: We can even restrict it, as far as in-law goes, that it can only be an in-law and the special permit will run with his ownership of the property.

Mr. Gordon: It doesn't have to have a time limit on it.

Mr. Rosen: It's kind of impractical

Mr. Salerno: What?

Mr. Rosen: It's kind of impractical.

Mr. Salerno: Well, I mean, to be occupied, you know, during his ownership. It's limited to his family.

Mr. Gordon: Then you're creating a nonconforming building.

Ms. Starfas: If you guys moved, it might end up a two family.

Mr. Gordon: If it only extends to his ownership of the house, after his ownership of the house, you'll be creating a nonconforming building because an in-law apartment, by its nature, has a separate entrance, a separate bathroom, a separate kitchen.

Mr. Alarie: No, it would relate to the occupancy and use of this area. It could still be occupied by a single family home in its entirety.

Mr. Gordon: One family, okay, okay.

Mr. Salerno: We've done that before and called that, what do we call that Ron, a sunset provision or something of that nature?

Mr. Alarie: Correct.

Mr. Salerno: We limit it to the current families' use so that when it gets remarketed it doesn't get remarketed as a house with an in-law apartment.

Mr. Gordon: Without their coming back.

Mr. Salerno: That gives you the maximum protection.

Mr. Starfas: Where's the front of that place, at the front of the house, right?

Mr. Nolli: Yes. The front is going to be towards the driveway, our driveway, the existing driveway.

Mr. Starfas: Okay.

Mr. Nolli: It's actually going to turn our house into an "L" shape.

Mr. Starfas: Okay.

Mr. Nolli: We're designing it this way. We're spending a lot of time and money to design it so that for resale, if down the road we decided to sell the house, it's designed to look like a single family home.

Mr. Starfas: Okay.

Mr. George: Rich, how steep of pitch do you have for a roof and will the gutters be tied into perimeter drains?

Mr. Nolli: The gutters are tied into the perimeter drains now. I'm not sure of the pitch, but it's going to be the same pitch as the existing house.

Mr. George: So, it's going to be only one story?

Mr. Nolli: The same level as the lower roof.

Mr. George: Okay.

Mr. Kelleher: Then would the water be coming toward our yard or toward the other side?

Mr. Salerno: Again sir, would you just identify yourself. We have to create a record; that's why we ask people to do it.

Mr. Kelleher: I'm Andrea's husband. I live at 43 Paton Road.

Mr. Salerno: Do you have a last name?

Mr. Kelleher: Kelleher.

Mr. Salerno: Thank you sir.

Mr. Nolli: All of the drainage from the road goes into perimeter drains. Nothing goes out onto the lawn now. Nothing goes out onto the lawn now.

Mr. Kelleher: That's good. Keeping it dry is good.

Ms. Kelleher: Andrea Kelleher. Can I just ask one more question?

Mr. Salerno: Go ahead, Mrs. Kelleher.

Ms. Kelleher: Can you tell me about the air conditioning? Will it be noisy?

Mr. Nolli: There will be one more air conditioning unit right beside the other two that are there. It won't be any more noise than the two that are there now.

Ms. Kelleher: Yes.

Mr. Salerno: Have we answered inquiries? Seeing no further comment, we'll take the matter under advisement and notify you of our decision.

#### Decision

On May 31, 2005, the Shrewsbury Zoning Board of Appeals unanimously voted to grant the appeal of Richard and Diane Nolli, 67 Summer Street, Shrewsbury, MA, for a special permit as required by the Town of Shrewsbury Zoning Bylaw, Section VI, Table I, to allow the construction of an addition to be occupied as an in-law apartment upon property located at 67 Summer Street.

The board reviewed the appellants' proposal to construct a single story addition to the westerly side of their home that will be occupied as an in-law apartment and found that the design and the use of the addition were in harmony with the intent of the Zoning Bylaw in permitting such ancillary living accommodations within or attached to a single family dwelling. It was their opinion that the construction and occupancy of the in-law apartment would not adversely impact the welfare of either the general public or area residents and, therefore, unanimously voted to grant the appeal subject to the following restrictions:

1. The addition shall be constructed substantially in accordance with the plans submitted to and the appellants' presentation to the board.
2. The in-law apartment shall only be occupied by three or less individuals, all of whom shall be related to the appellants.
3. The rights authorized by this granting are restricted to the ownership and the occupancy of the subject premises by the appellants.

#### Vote

Mr. Salerno	Yes
Mr. George	Yes
Mr. Gordon	Yes
Mr. Rosen	Yes
Mr. Confalone	Yes

PUBLIC HEARING: James and Maureen Umphrey, 85 Lamplighter Drive, Shrewsbury, MA.

PURPOSE: To hear the appeal of James and Maureen Umphrey, 85 Lamplighter Drive, Shrewsbury, MA, for a variance to the Town of Shrewsbury

Zoning Bylaw, Section VII, Subsection C, to allow the installation of an inground swimming pool 10 ft. from the side lot line of property located at 85 Lamplighter Drive. The subject premises is described on the Shrewsbury Assessor's Tax Plate 34 as Plot 70-103.

PRESENT: Anthony M. Salerno, Chairman, Paul M. George, Melvin P. Gordon, Alfred C. Confalone, Ronald I Rosen and Ronald S. Alarie, Building Inspector.

Mr. Salerno opened the hearing by reading the advertisement as it appeared in the Worcester Telegram on May 16, 2005 and May 23, 2005.

Mr. Salerno: Please identify yourself for the record and make your presentation.

Mr. Umphrey: My name is James Umphrey. I reside at 85 Lamplighter Drive with my wife and four children. It is our objective to install an inground pool. We have a pie-shaped lot, as you can see. In trying to install a pool we have engaged a pool company, Snyder Pools, predicated on a positive outcome of this meeting, to install a pool. We looked at a number of different designs. It appears as though our hardship is based on two factors, one being the fact that the lot is a pie-shaped lot and it narrows in the back yard. Number two is that we have a topographical issue. The site has a fairly steep slope coming down the hill and then it flattens out some. That would be the place that is really in the flatter part of the yard. That is really what our hardship is. It is based on both the shape of the lot as well as the topography of the land.

Mr. Salerno: It doesn't meet your programmable needs, right?

Mr. Umphrey: It meets our programmable needs. The one inaccuracy with that particular drawing that Snyder did is that the pool itself will be more centered with the foundation. It would actually be pretty much squared to the back of the house, but that back corner, I would guess going down the hill, would still impede on that setback requirement.

Mr. Salerno: The pool size, Mr. Umphrey, is 20 by 40?

Mr. Umphrey: It's 20 by 40.

Mr. Salerno: Forty-two?

Mr. Umphrey: It's actually what they call like a "Lazy L Pool." So, I guess from one end to the other at its longest, it may be 42, but that's the shape.

Mr. Rosen: Ron, on this lot, is there no rear setback and two sides?

Mr. Alarie: Correct.

Mr. Confalone: You say that right behind your house it drops off?

Mr. Umphrey: Well, if you're looking from the front of our house, in the back from the left side it drops down. Lamplighter Drive goes up the hill. We're kind of the second house and then it flattens out as you go down to the right-hand side. To try to put it further up, which would meet that setback requirement it would require a tremendous amount of site work. There may, in fact, be quite a bit of ledge in there. I'm not sure.

Mr. Gordon: I'm still trying to make peace with the "Lazy L."

Mr. Salerno: You're not comfortable with the "Lazy L?"

Mr. Gordon: I'm not comfortable with it, the "Lazy L." I did look at the lot. I think the hardship's in the topography of the land and the shape of the lot. I didn't want to climb over your white fence, but we were able to look at it.

Mr. Salerno: Would it make a difference on the size of the pool? If it was 16 by 32, would you need relief?

Mr. Umphrey: I'm not sure about that.

Mr. Gordon: Ron, is the deck of a pool considered?

Mr. Alarie: The setback is to the water's edge.

Mr. Gordon: The water's edge?

Mr. Alarie: You're talking about the apron?

Mr. Gordon: Yes, the apron.

Mr. Alarie: It's to the sidewall of the pool.

Mr. George: So, it's going to be 10 ft. off of the property line?

Mr. Alarie: That's what they're asking for on one side.

Mr. George: So, the proposed pool will have fencing around it?

Mr. Umphrey: Yes. We have an existing fence that is a 6 ft. high fence between us and our neighbors on both of those sides.

Mr. George: What is it, stockade?

Mr. Umphrey: Yes. But, we would put in an additional fence. We have young children so we'd put in a fence. You would enter the pool from the basement level and come out and there'd be a fence all the way around the pool within the yard itself.

We have spoken with all of our neighbors. Our neighbors did not have an objection to the installation of the pool.



Mr. Gordon: Well, you're quite a distance from any one of your neighbors, from where your pool is.

Mr. Umphrey: Right.

Mr. Confalone: If the topography is the issue, even if you made it a little bit smaller, you wouldn't be able to get it any closer to the house?

Mr. Umphrey: That's correct.

Mr. George: The pool shape that we have on our diagram is rectangular.

Mr. Umphrey: Right.

Mr. George: Can you kind of draw out what it would look like, the one that you're proposing?

Mr. Umphrey: Yes. Can I draw it on yours?

Mr. George: Yes.

Mr. Salerno: The north corner of the pool at 20 by 40 is the one that you're saying is intended?

Mr. Umphrey: Let me just get that right here. I believe it comes out and then it comes like that.

Mr. George: Okay.

Mr. Umphrey: I would say that it is more towards the foundation of the house. The way that the fencing will be, there will basically be a gate to get out here to get in here so that the kids will not have access to get in anywhere from the house unless we let them.

Mr. Salerno: This is the 10 ft.?

Mr. Umphrey: The 10 ft. is right here.

Mr. Gordon: Just one corner?

Mr. George: Instead of having the whole length of the pool?

Mr. Umphrey: That's exactly right.

Mr. Salerno: That's based on a 20 by 40 pool?

Mr. Umphrey: That's why I say this is probably 42 ft. from here to here at that length, but I think it's really pretty much a 20 by 40 pool. He suggested this just from the point of view that it will fit into the contour of the land and the house. This is really where the deepest slope is, coming down this way.

Mr. Salerno: Is there anyone in attendance who would like to comment on this petition? Sir, just identify yourself for the record.

Mr. Folen: Sure, my name is Denis Folen from 88 Lamplighter Drive. I'm an abutter. I just want to say for the record that we have no opposition whatsoever. As for the size of the pool, with four kids I worry that it's not big enough.

Mr. Salerno: You should be the first person invited to the pool, after Mr. Gordon. You should be the second person invited.

Mr. Gordon: I've always insisted that we get a pool membership!

Mr. Salerno: Traditionally, Mr. Gordon has tested diving boards throughout the town for a number of years now.

Are there any other questions? Thank you for taking the time to come. It's important to hear from the neighbors.

Seeing no further comment, we'll take the matter under advisement and notify you of our decision.

Mr. Umphrey: Thank you very much; I appreciate your time.

The decision of the board is on the following page.

#### Decision

On May 31, 2005, the Shrewsbury Zoning Board of Appeals unanimously voted to grant the appeal of James and Maureen Umphrey, 85 Lamplighter Drive, Shrewsbury, MA, for a variance to the Town of Shrewsbury Zoning Bylaw, Section VII, Subsection C, to allow the installation of an inground swimming pool 10 ft. from the side lot line of property located at 85 Lamplighter Drive.

Upon review of the appellants' proposal to install an inground swimming pool upon their property within an area to the rear of their home, the board noted that the Umphrey's lot is of pie-shaped configuration and that the yard to the rear of the dwelling has a severely sloping topography. It was their opinion that, under such circumstances, the literal application of the minimum terms of the Zoning Bylaw would impose a substantial hardship to Mr. and Mrs. Umphrey in their attempt to site a pool upon their property. They found that the reduction of the minimum 20 ft. side yard setback to 10 ft. along the lot's northerly side lot line would not seriously depart from either the intent or the purpose of the bylaw and that the installation, as proposed, would not adversely impact the welfare of either the general public or of neighboring properties. It was, therefore, unanimously voted to grant the appeal as presented to the board.

#### Vote

Mr. Salerno	Yes
Mr. George	Yes
Mr. Gordon	Yes
Mr. Rosen	Yes
Mr. Confalone	Yes

PUBLIC HEARING: Scott and Lisa Cossette, 23 Stonybrook Lane, Shrewsbury, MA.

PURPOSE: To hear the appeal of Scott and Lisa Cossette, 23 Stonybrook Lane, Shrewsbury, MA, for a variance to the Town of Shrewsbury Zoning Bylaw, Section VII, Subsection C, to allow the construction of a pool house 5 ft. from the side lot line of property located at 23 Stonybrook Lane. The subject premises is described on the Shrewsbury Assessor's Tax Plate 28 as Plot 236-71.

PRESENT: Anthony M. Salerno, Chairman, Paul M. George, Melvin P. Gordon, Alfred C. Confalone, Ronald I. Rosen and Ronald S. Alarie, Building Inspector.

Mr. Salerno opened the hearing by reading the advertisement as it appeared in the Worcester Telegram on May 16, 2005 and May 23, 2005.

Mr. Salerno: Please identify yourself for the record and make your presentation.

Ms. Cossette: I'm Lisa Cossette. I live at 23 Stonybrook Lane with my husband Scott and our three children.

Last fall we had a pool put in. What I've attached to my application is the proposed pool decking, fence and pergola, we're calling it that. To date, everything has been done. We had an existing landscaped timber deck. That's been removed. The pool has been put in and it's pretty accurate on the drawing. The water's edge is 20 ft. to 20.5 ft. from the side yard. I'm looking at the side yard requirement between Lot 26A and my lot, 25A. The decking has been put in. The fence has been put in.

We are looking to build an 8 by 15 pergola, it's really four posts and a roof. We're looking to build that in the proposed pergola area. The side yard requirement for our property is 10 ft. I'm looking to put the back two posts of that structure at the 5 ft. mark instead of the 10 ft. mark.

Our goal is to provide shade. We live where Weagle Farm used to be. There are, basically, no trees. We've planted some but we really do need shade. Because of the exposure of our house, I have sun from 10:00 to 6:00 in the evening where that pool is placed.

Mr. Gordon: It's a good pool to get a membership for.

Ms. Cossette: Yes, but I do need a place for shade. I've gone through two umbrellas and two of those portable gazebos because we live in a wind tunnel. All the fabrics have

been ripped. The umbrellas end up in the wetlands. I even had a portable gazebo bolted to our deck when we had the deck. That went sailing in the wind. So, I'm looking to build a permanent, not solid, structure with a roof with the same shingles as our house.

Mr. Gordon: So, this would have no walls? It's a roof and four posts?

Ms. Cossette: Yes. That's what I'm looking to do. If you look at where the pool is located, it's pretty close to the house. I have a bulkhead right there to the basement. There's a storage area right in the basement where I keep all of the pool related stuff. I'm really looking just for shade.

The hardship we're faced with really goes back to where we put the pool in. We have a drainage easement, if you can note that. That really told us where we needed to locate the pool in the first place. I didn't want to have pool alarms on my doors and things like that, but now I have to. The pool is now pretty close to the house. We looked at different locations for this. I could put it on the other side towards where the deck used to be, but the dimensions are 8 by 15, which isn't very large. That gets in the whole area of the foot traffic for the kids going around the pool. The best place is over toward Lot 26A. You probably can't tell from the proposed pergola size, but the two front posts, which are more towards my property, my house, would be placed using an 8 by 15 structure, leaves me about 7 ft. from the water's edge to those first two posts. If I went within the 10 ft. side yard requirement, we would only have about 2 ft. to get around those posts. That's a safety issue for me.

Do you have any questions?

Mr. Gordon: Is this one of the houses that was involved in the wetland problem or not?

Ms. Cossette: You know what, I'm not really sure. The last name is Peters. I know the wetlands reclamation, if that's the right word, was resolved on their property, but I believe that there were several properties involved. I don't know whether it was done back when the properties were built in the first place. Each property had so many square feet. Because we're right by the wetlands, back last year when we wanted to get the permit for the pool, we went through the conservation committee and I filed the Notice of Intent.

Mr. Gordon: Will you require another Notice of Intent for this, Ron?

Mr. Alarie: I'm not sure what appeared on their wetlands permit application.

Ms. Cossette: I have all of that. This was part of it, all of these proposed structures. I do have that Notice of Intent with me if you'd care to look at it.

Mr. Confalone: So, you want to build this inside an existing swing set area?

Ms. Cossette: No, that was moved. See the way that it points to two locations?

Mr. Confalone: Oh, I see, you moved it back.

Ms. Cossette: I moved it back. It's basically pea stone with two swings and a trapeze bar and we moved that.

Mr. Confalone: You can't be 10 ft. from the sideline moving it closer to the pool for what reason again?

Ms. Cossette: If I put this 8 by 15 structure within the 10 ft., I'd have about 2 ft. between the front posts and the water's edge. That worries me. There's a diving board also at that one corner and that worries me.

Mr. Salerno: You have a pie-shaped half acre lot and the dimensions sloping down. You've squeezed as much as you can squeeze into that lot.

Ms. Cossette: Yes. There is a considerable amount of grass area behind that pool. We can still play whiffle ball. I don't anticipate the swing set being around much longer.

Mr. Salerno: Is the control barrier something that's required to stay there permanently, Ron?

Mr. Alarie: Excuse me?

Mr. Salerno: It says "control barrier."

Ms. Cossette: That's our silt fence.

Mr. Salerno: That's required to stay there?

Mr. Alarie: No.

Ms. Cossette: I need to apply for a Certificate of Compliance to have that removed.

Mr. Alarie: Once the site is stabilized, then those barriers will come down.

Ms. Cossette: I already have the grass seed growing. Conservation has to come out.

Mr. Salerno: They haven't signed off on it yet?

Ms. Cossette: No. Honestly, the grass is just coming up behind them. I haven't even removed the straw yet. So, I'm waiting until all of that is really settled. It's not too big of an area, believe it or not, that got affected in the backyard. My side yard by the garage is all ripped up. So, that's my last project.

Mr. Confalone: Have you addressed this with your abutter?

Ms. Cossette: Yes. All of the abutters were notified of this back in the fall. They've all been notified again for, what shall we call this thing, the pool structure. No one has a

problem. I should have had them come. This neighbor at Lot 26A offered to come, but they have no problem with it and, in fact, they let us use their yard.

Mr. Gordon: Is this a cement floor under the pergola?

Ms. Cossette: The pool? The pergola?

Mr. Gordon: The pergola.

Ms. Cossette: It's the decking.

Mr. Gordon: It's the decking?

Ms. Cossette: Just in case I can have this done, the front two posts would be on the decking and that is reinforced. They dug 2 ft. lower and I had them put rebar where those would be. The back two posts are in dirt. I anticipate sono tubes for those.

Mr. Salerno: You have a pretty good handle on all the construction terms. Have you been doing this for a while?

Ms. Cossette: Yes. I have to know everything and I was out there every day. They put the diving board base in the wrong spot. It wasn't going to be to code so I grabbed them right away and told them where to put it.

Mr. Salerno: Okay.

Mr. Gordon: Another "A type" personality.

Ms. Cossette: Exactly,, not "AAA" though, just A.

Mr. Salerno: Is there anyone in attendance who would like to comment on this petition? Seeing no further comment, we'll take the matter under advisement and notify you of our decision.

### Decision

On May 31, 2005, the Shrewsbury Zoning Board of Appeals unanimously voted to grant the appeal of Scott and Lisa Cossette, 23 Stonybrook Lane, Shrewsbury, MA, for a variance to the Town of Shrewsbury Zoning Bylaw, Section VII, Subsection C, to allow the construction of a pool house 5 ft. from the side lot line of property located at 23 Stonybrook Lane.

Upon review of this appeal, the board noted that there is a significant portion of the subject property situated to the rear of the appellants' home that is encumbered by wetlands and a drainage easement. They found that these encumbrances severely limited the placement of the inground swimming pool that they had recently installed within this area as well as the siting of other accessory structures. It was their opinion that, in this instance, the imposition of the minimum terms of the Zoning Bylaw would impose a

substantial hardship to the Cossettes and they felt that the reduction of the minimum side yard setback for the type of open structure proposed would not materially depart from the intent of the bylaw. It was, therefore, unanimously voted to grant the appeal as presented to the board.

#### Vote

Mr. Salerno	Yes
Mr. George	Yes
Mr. Gordon	Yes
Mr. Rosen	Yes
Mr. Confalone	Yes

PUBLIC HEARING: Francis P. Tomaiolo and June K. Tomaiolo, 307 Grafton Street, Shrewsbury, MA.

PURPOSE: To hear the appeal of Francis P. Tomaiolo and June K. Tomaiolo, 307 Grafton Street, Shrewsbury, MA, for a special permit as required by Section VI, Table I, and variances to Section VII, Subsections D-2-a and d, of the Town of Shrewsbury Zoning Bylaw to allow the use of outdoor seating and the expansion of off-street parking upon property located at 307 Grafton Street. The subject premises is described on the Shrewsbury Assessor's Tax Plate 34 as Plots 39-3 and 40.

PRESENT: Anthony M. Salerno, Chairman, Paul M. George, Melvin P. Gordon, Alfred C. Confalone, Ronald I. Rosen and Ronald S. Alarie, Building Inspector.

Mr. Salerno opened the hearing by reading the advertisement as it appeared in the Worcester Telegram on May 16, 2005 and May 23, 2005.

Mr. Salerno: Please identify yourself for the record and make your presentation.

Ms. Tomaiolo: Good Evening. I'm June Tomaiolo and here with me is Frank and my son, Matthew Tomaiolo.

I know that we've been here a few times in the past. I would just like to explain that a little more. Originally, we went to the planning board. We were in the process of building this as an office building. We received all of the needed approvals from the planning board for this office building. As we were breaking ground, the town changed the zoning to commercial because I think that they felt that, along Route 9, the commercial use was going to bring more revenue to the town. We weren't sure how that was going to affect us. We were still going forward and building this building as an office building. We put out our sign and found that, because it was zoned commercial, the majority of the people that called us wanted commercial space. The whole upstairs is office space. Downstairs we're finding that commercial is what they wanted to put there. So, it made for some changes, obviously changes that were unforeseen to us because we didn't plan it to be commercial. So, now we're back here because we're trying to now

take this situation and make it work with the commercial zone that the town had changed it to. So, that's why we're here to start.

The special permit we're here for, you'll see on the map that you have, is for that little round spot down on the first level. We were going to ask for some outdoor for the people in the office park originally anyway. As it turned out, we do have a coffee shop there and it works out that they could bring coffee and sit outside. The people that work in the building could come out and sit there and eat their lunch if they wanted to or just to be able to be outside.

Mr. Salerno: Do you have a head count on how many people are in that building?

Ms. Tomaiolo: Well, we have people coming and going. We have a dentist who has people coming and going. We now have an attorney. I think there are maybe three people in his office. There are about four people in the dentist's office. In our office, there are, at any time, about six people. In the salon downstairs, I think there are three toners and I think that they have five people that work there.

Mr. Gordon: A total of five or eight?

Ms. Tomaiolo: No, I think it might be eight. Then, at the coffee shop, it's just the owner right now and whoever's going to be working with him from time to time. Then we have one unit of about 1,000 sq. ft. in the middle downstairs that's not rented.

So, as a result, the other hardship that we have is, if you notice on this map that we gave you, the corner where we're asking for the extra spaces touches on the land that we own but it is 72 ft. from the public way. That is the town land. We're pretty much a peninsula that's surrounded by town property. Even though in some places along here we haven't had a problem as far as being away from the town road, we're next to town property.

Mr. Tomaiolo: That little section would give us three parking spots down below which we need for the retail space.

Mr. George: On the middle space, do you want to speak about that?

Mr. Tomaiolo: The middle space is an area that we have parking now. It is our reserved parking.

Ms. Tomaiolo: There's a little pink line on that.

Mr. Tomaiolo: Our parking area is 19 ½ ft. wide. I think it requires 24 ft. So, we're going to designate that as a compact car area. Most of the cars that come in there are compact anyway.

The other issue was more of a hazard on the upper parking lot. We had four spots that were attached to the existing area, but as you drove into the driveway, those four spots created a sight problem for people coming in and going out. So, we decided to eliminate those and move them over not fully aware of the 15 ft. side requirement. The stone wall that exists there, the blacktop's about 9 ft. from the street. So, we're in violation of about



4 to 5 ft., but it creates a better parking area for sight coming in and out of the driveway. It's an area that, again, there's a stone wall there and the likelihood of a sidewalk going in there is pretty remote. We did a variance and got relief from the zoning board on the sidewalk issue that if the town ever decided to put a sidewalk in then we would definitely put it in.

Mr. George: Frank, is that a sloped driveway there or is it level?

Mr. Tomaiolo: Yes. There's about a two to one slope at that point. From the stonewall, it drops off about 4 ft.

Ms. Tomaiolo: So, the cars are lower so that, when you're coming out, you actually go up a bit so that you can see because there is quite a bit of traffic that comes around from the road.

Mr. George: No, but I'm saying that, if the cars were still parked along the driveway, it would probably create some type of a hazard in the wintertime, maybe along the side of the driveway entranceway?

Mr. Tomaiolo: If they were in the original spaces, yes, absolutely.

Mr. Gordon: I think that, in backing out of a space and if somebody was coming in, you would have kissed.

Mr. Tomaiolo: Right. Again, we didn't add four more spaces. We just re-utilized the spaces to another area which we feel is safer.

Mr. Gordon: You said that the spaces in front of the beauty parlor is where you would have those designated for compact cars?

Mr. Tomaiolo: Yes.

Mr. Gordon: Can you enforce that? Ron, can you enforce that?

Mr. Alarie: We only have provisions in the Office Research District and one other district in which you can put in up to 25 % of the required spaces and designate those spaces for compact cars with the narrower stalls. I don't believe that I could enforce this.

Mr. Gordon: So, you would just line them and if somebody parked in there, it would be his responsibility to move them if they wanted?

Mr. Alarie: It would have to be controlled by the owner of the property I believe. You could require signage as a form of notification.

Mr. Gordon: Okay, all right.

Mr. Tomaiolo: So far, the users never had a problem, going in or out.

Mr. Gordon: I would think that a big car that was facing in one of those spots and trying to get out would be making wonderfully wide turns.

Mr. Tomaiolo: Well, we have been parking there for a while now and we haven't had a problem yet. We do plan to make that a designated area for employees and smaller cars.

Mr. Salerno: Who's Lava Realty Trust? Do you know who that is? Are they any connection with you folks?

Mr. Tomaiolo: No.

Ms. Tomaiolo: No.

Mr. Salerno: That's your abutter?

Mr. Alarie: I believe it's the Flynn Property. The Flynns own the lot on that side of this site.

Ms. Tomaiolo: That's where the barn is. There's a red barn and it's down on Route 140 just as you come out from under the bridge.

Mr. Gordon: Where they found all the guns. Isn't that what they found there?

Ms. Tomaiolo: There were chickens in there at one time. I don't know if there were guns.

Mr. Salerno: So, you don't have any ability to expand anywhere but where you are?

Mr. Tomaiolo: No.

Mr. Salerno: You're locked in there, right?

Mr. Tomaiolo: Right. We're trying to accommodate what we need for parking down below and at the same time not make it all blacktop.

Mr. Gordon: The outside area was always planned, was it not, but it was going to be planned as a common area?

Mr. Tomaiolo: Yes.

Ms. Tomaiolo: Yes.

Mr. Tomaiolo: We were going to have a common area for all of the employees.

Ms. Tomaiolo: It still will be common area.

Mr. Gordon: Well, it will be common, but it will be more common to the coffee shop than everybody else.

Mr. Tomaiolo: Right.

Mr. Alarie: I think that if you look up in the upper corner box, the zoning requirements, if you look at the open space, there's a minimum of 20 % required in that district and there's almost 53 % on the lot, basically because of the topographical differences.

Mr. Gordon: Yes.

Mr. Alarie: Then, the lot coverage maximum of 50 %. They've really only covered 8 % with building. So, dimensionally, it's well under the maximum permitted.

Mr. Gordon: Yes.

Mr. Salerno: It's double tiered too.

Mr. Tomaiolo: Yes.

Mr. Alarie: Just that extremely wide right-of-way between the property and Grafton Circle adds to the appearance that there is a lot more property than there actually is there.

Mr. Gordon: Does the town have any plans to do anything there that you know of?

Mr. Alarie: Not to my knowledge.

Mr. Salerno: Hopefully, not open a coffee shop.

Ms. Tomaiolo: We actually maintain it. We cut the grass and maintain it. I don't know if others have had this problem, but it's been very unusual to have a problem like this where in the middle of construction that the zoning changes.

Mr. Salerno: When did the zoning change there, Ron?

Mr. Alarie: In March of 03, I believe we changed all of that Route 9 corridor, almost all of the Industrial District went to commercial as we tried to promote a better use of that corridor.

Mr. Tomaiolo: Our plans and or site plan were already done at that time.

Ms. Tomaiolo: We were actually just getting into the ground and doing the site work.

Mr. Gordon: Actually, this fits in with the plan. They've done a good job fitting in with the plan. It's probably the prettiest commercial building in town.

Mr. Salerno: Oh, the building is beautiful.

Mr. Gordon: Office or commercial?

Ms. Tomaiolo: Well, both.

Mr. Salerno: There's clearly no one in attendance to ask if they want to inquire. What about board members?

Mr. Rosen: I have one question. On your little zoning requirement here, the 51 spaces that are required, is that as commercial or is that as office.

Mr. Tomaiolo: That's a combination.

Mr. Rosen: Okay.

Mr. M. Tomaiolo: That's based on tenant use.

Mr. Tomaiolo: It's commercial down and office up.

Mr. M. Tomaiolo: Leaving the middle space as retail that's still available.

Mr. Tomaiolo: What we're saying is that we won't be back here again. I promise.

Mr. Salerno: Well, we hear that all of the time.

Mr. Gordon: Some of the park benches that you might put down there, why don't you think of talking to the parks department and giving them a couple of benches for one of the parks?

Mr. Tomaiolo: I could do that.

Mr. Gordon: That way I'd go to sit down in a park and it'll say "Tomaiolo Bench."

Mr. Salerno: Mr. Gordon has that knack of securing things for the town through all of his services.

Mr. Gordon: Trying to, voluntarily.

Mr. George: Frank, the proposed patio, is that along the front of the building too or is it just at the side?

Mr. Tomaiolo: No, just that little spot there. The only way to get to it is to go up the steps, through the overhang.

Ms. Tomaiolo: There is a doorway there that comes outside from the coffee shop.

Mr. Tomaiolo: You're not going to access it from the driveway.

Mr. George: So, you have to go through the entrance of where the coffee shop is?

Mr. Tomaiolo: No, you can come up the main entrance to the downstairs where the walkway is.

Mr. George: There's no access to it from the parking lot at all?

Mr. Tomaiolo: No.

Ms. Tomaiolo: No.

Mr. Salerno: There's an elevation difference, isn't there?

Mr. George: Yes.

Ms. Tomaiolo: Now we have to build it up because of the handicap accessibility.

Mr. Tomaiolo: It has to be level so it has to be built up.

Mr. Salerno: You're going to build that up?

Mr. Tomaiolo: Yes.

Ms. Tomaiolo: We're planning to. We have the old well stone from the old house. We're planning to put that between the walkway and that hoping to be able to put a little water fountain there so that it will be an obstruction. People won't be able to cut from the driveway. They'll have to come up through the walkway and out.

Mr. Confalone: It sounds like the landscaping and everything is very nice. Why do you need a variance for parking lot landscaping?

Mr. Alarie: Because our bylaw requires that a 15 ft. strip remains between the actual edge of the right-of-way and the parking area to provide for landscape architecture. Rather than the paving that you see along some other areas of Route 9 where its paved from the sidewalk right back into the site, there now has to be some landscaping.

Mr. Gordon: Here they've retained an old stone wall though that fits right in.

Mr. Tomaiolo: Right.

Mr. Salerno: Are there any further inquires? Ron, are you all set? Seeing no further comment, we'll take the matter under advisement and notify you of our decision.

#### Decision

On May 31, 2005, the Shrewsbury Zoning Board of Appeals unanimously voted to grant the appeal of Francis P. Tomaiolo and June K. Tomaiolo, 307 Grafton Street, Shrewsbury, MA, for a special permit as required by the Town of Shrewsbury Zoning Bylaw Section VI, Table I, and voted four in favor of and one opposed to the granting of a variances to Section VII, Subsections D-2 a and d, to allow the use of outdoor seating and the expansion of off-street parking upon property located at 307 Grafton Street.

With respect to the appellants' request for the special permit to allow the use of a small area situated along the easterly side of the new commercial building that they are constructing upon the subject premises, the board found that the use of this area by both the employees of the businesses occupying this structure and the patrons of the coffee shop located therein for outdoor dining and seating was in harmony with the intent of the Zoning Bylaw in permitting such activity within the Commercial Business District. They also found that the use of the patio area for said purposes would be compatible with the general character of the Route 9/Route 140 interchange and that it would not create any condition which would adversely impact the welfare of either the general public or area businesses or residents. They, therefore, unanimously voted to grant this facet of the appeal.

The board further reviewed Mr. and Mrs. Tomaiolo's appeal for a variance to Subsections D-2a and b relating to the configuration of the off-street parking area situated upon this site and found that this property is very unique in terms of its location. It is situated between Grafton Street and Grafton Circle and it was noted that there is an inordinate amount of grassed area, over 50 ft. in some areas, between the physical edge of the traveled way and the front property lines of this parcel. There is also a considerable difference in the topography across the east/west axis of the parcel so that the two floors of the building are at different walk-out levels that have a difference in elevation of approximately 10 ft. and, further, have separate parking areas to access each floor. It was the opinion of a majority of the members of the board that, as they have found in previous appeals concerning this site, these features severely restrict the development of this property and that the reduction of the front landscaping buffer as well as the traffic isle width would not significantly depart from the intent of the Zoning Bylaw. They noted that the appellants have constructed a very attractive building upon this site, that it is very well landscaped containing a substantially greater area of open space than is prescribed by the bylaw and that the parking area, as developed, functions appropriately and has an adequate number of spaces for the businesses occupying the building. They, therefore, voted to grant the appeal as presented to the board.

With respect to the variance relative to the reduction of the 15 ft. wide landscape buffer required between the parking area and the front lot lines of the site, one member of the board was of the opinion that the parking could be reconfigured so as to comply with this requirement. He found that, in this instance, the granting of the relief requested would deviate from the intent of the bylaw and, therefore, voted to deny this aspect of the appeal.

#### Vote for Special Permit

Mr. Salerno	Yes
Mr. George	Yes
Mr. Gordon	Yes
Mr. Rosen	Yes
Mr. Confalone	Yes

#### Vote for Variance/Section VII, Subsection D-2a

Mr. Salerno	Yes
Mr. George	Yes
Mr. Gordon	Yes
Mr. Rosen	Yes
Mr. Confalone	Yes

Vote for Variance/Section VII, Subsection D-2d

Mr. Salerno	Yes
Mr. George	No
Mr. Gordon	Yes
Mr. Rosen	Yes
Mr. Confalone	Yes